

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL CASE NO. 1:10cv18

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) O R D E R
)
400 ROPER STREET, MORGANTON,)
NORTH CAROLINA, being real)
property described in a deed at Book)
431, Page 468, of the Registry of)
Burke County, North Carolina,)
together with the residences, and all)
appurtenances, improvements, and)
attachments thereon,)
)
Defendant.)
_____)

THIS MATTER is before the Court on the Claimants' Motion to
Dismiss [Doc. 10]; the Magistrate Judge's Memorandum and
Recommendation [Doc. 12] regarding the disposition of that motion; and
the Claimants' Objections to the Memorandum and Recommendation [Doc.
13].

I. PROCEDURAL BACKGROUND

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider a pending motion in the above-captioned civil action and to submit to this Court a recommendation for the disposition of this motion.

On May 11, 2010, the Magistrate Judge filed a Memorandum and Recommendation [Doc. 12] in this case containing proposed conclusions of law in support of a recommendation regarding the Claimants' Motion to Dismiss [Doc. 10]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. [Id.]. The Claimants filed timely Objections to the Memorandum and Recommendation on May 23, 2010. [Doc. 13].

II. STANDARD OF REVIEW

The Federal Magistrate Act requires a district court to "make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. §

636(b)(1). The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objections have been raised. Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 472, 88 L.Ed.2d 435 (1985). Additionally, the Court need not conduct a *de novo* review where a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982).

III. ANALYSIS

In their Motion to Dismiss, the Claimants argue that this civil forfeiture action is barred by the five-year statute of limitations set forth in 19 U.S.C. § 1621. [Doc. 10 at 3-4]. The Magistrate Judge concluded that the Government’s Complaint “sufficiently alleges the occurrence of predicate acts and the use of such property in the facilitation of such acts such that the January 15, 2010, filing of this action is not time barred” and thus recommended that the Claimants’ Motion to Dismiss be denied. [Doc. 12 at 9].

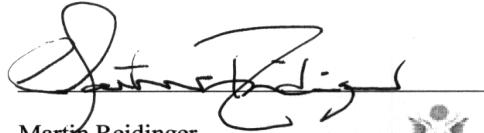
The Claimants object to the Magistrate Judge's Recommendation, arguing that it "misstates the law and is contradicted by the plain text of 19 U.S.C. § 1621, well settled controlling legal precedent concerning the nature of drug conspiracy offenses, and several of the very cases cited in the [Memorandum and Recommendation]." [Doc. 13 at 1].

After a careful *de novo* review of the Magistrate Judge's Recommendation [Doc. 38], the Court finds that the Magistrate Judge's proposed legal conclusions are consistent with current case law and the plain language of 19 U.S.C. § 1621. The flaw in the Claimants' argument is that it would allow for the possibility that the statute of limitations for the forfeiture action could expire while criminal activity continued to occur on the property. Such cannot be the proper interpretation of § 1621. Accordingly, the Court hereby **ACCEPTS** the Magistrate Judge's Recommendation that the Claimants' Motion to Dismiss be denied.

IT IS, THEREFORE, ORDERED that the Claimants' Objections to the Memorandum and Recommendation [Doc. 13] are **OVERRULED**, the Magistrate Judge's Recommendation [Doc. 12] is **ACCEPTED**, and the Claimants' Motion to Dismiss [Doc. 10] is **DENIED**.

IT IS SO ORDERED.

Signed: June 18, 2010



Martin Reidinger
United States District Judge

